

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

MARLON SISNERO-GIL,

Defendant.

No. 15-cr-605-4 (RJS)

MARLON SISNERO-GIL,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

No. 23-cv-3833 (RJS)

ORDER

RICHARD J. SULLIVAN, Circuit Judge:

Petitioner-Defendant Marlon Sisnero-Gil has moved for relief from his conviction pursuant to 28 U.S.C. § 2255, principally asserting that his prior counsel provided ineffective assistance of counsel in connection with his guilty plea and sentencing. (Doc. No. 250.) After reviewing Sisnero-Gil’s motion papers, the government has concluded that the testimony of Petitioner’s former counsel, Oliver Storch (“Prior Counsel”), will be needed in order to allow the government to respond to certain aspects of the motion, and requests that the Court direct Prior Counsel to provide sworn testimony, in the form of an affidavit or affirmation, addressing the allegations of ineffective assistance of counsel made by Petitioner. (Doc. No. 252.) The government also requests that Petitioner be ordered to execute a waiver of the attorney-client privilege in light of his assertions of ineffective assistance. (*Id.*) Sisnero-Gil has subsequently filed a signed waiver of his attorney-client privilege. (Doc. No. 253.)

Because Petitioner has waived attorney-client privilege as a matter of law by asserting claims of ineffective assistance of counsel, *Frias v. United States*, No. 01-cr-307 (JFK), 2009 WL 1437797, at *1 (S.D.N.Y. May 20, 2009) (quoting *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991)), and because the Court is satisfied that the testimony of Prior Counsel is needed to resolve at least some portions of the petition, IT IS HEREBY ORDERED THAT, by September 18, 2023, Prior Counsel shall provide sworn testimony, in the form of an affidavit or affirmation, addressing the allegations of ineffective assistance of counsel made by Petitioner.

IT IS FURTHER ORDERED THAT the government shall file its opposition to the petition by October 2, 2023.

IT IS FURTHER ORDERED THAT Petitioner shall file his reply, if any, no later than October 31, 2023.

SO ORDERED.

Dated: August 23, 2023
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation